

CERTIFICATE OF FACSIMILE TRANSMISSION

This is to certify that this document entitled ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT is being faxed to Examiner Steven L. Weinstein at central fax no. 703-872-9306 this 26th day of NOVEMBER, 2003.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No. : 09/976,377
Applicant : Joseph M. MURRAY et al.
Filed : October 12, 2001

Confirmation No. 9750

TC/A.U. : 1761
Examiner : Steven L. WEINSTEIN

Docket No. : KFHI-100
Customer No.: 23290

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop NON-FEE AMENDMENT
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated November 7, 2003, Applicants elect Group II, Claims 21-40, directed to a method of making a multiplicity of segmented rolled food products. The election is made with traverse.

I. RESTRICTION BETWEEN GROUPS I AND II

Pursuant to MPEP 806.05(e), a process and an apparatus for its practice can be

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shown to be distinct if (a) the process as claimed can be practiced by a materially different apparatus, or (b) the apparatus as claimed can be used to practice a materially different process. "The burden is on the examiner to provide reasonable examples that recite material differences." See MPEP 806.05(e).

The Examiner stated that gel-like plastic children's toys that "come[s] in all different shapes" could be produced by the claimed apparatus. However, the apparatus as claimed recites a rotating segmenting roller having on its surface a plurality of circumferential lanes each of which receives separate strips of food, wherein each lane contains a series of circumferentially spaced radially projecting knife edges that are disposed at least substantially parallel to the axis of rotation of the roller, and wherein the knife edges segment a strip of food into a plurality of segments so that the segmented strips of food can be rolled into a roll without separating the segments from the strip of food. The Examiner has not established how the claimed lanes on a rotating roller and the claimed circumferentially placed projecting knife edges, which are configured for receiving and segmenting a strip of food, could be used to make plastic toys in a wide variety of shapes. Accordingly, the requirements for restriction pursuant to MPEP 806.05(e) have not been met. Reconsideration and withdrawal of the restriction requirement between Groups I and II are respectfully requested.

II. RESTRICTION BETWEEN GROUPS II AND III

Pursuant to MPEP 806.05(f), a process of making and a product made by the process can be shown to be distinct if (a) the process as claimed is not an obvious process for making the product and the process as claimed can be used to make other and different products, or (b) the product as claimed can be made by another and materially different process.

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The Examiner stated that the claimed product does not require continuous conveying and parallel strips and could be made by hand. The segmented rolled food item as claimed recites a strip of support material and a strip of food supported upon the strip of support material, rolled into a roll having multiple rotations with the strip of support material located on the outside of the roll. The strip of food is segmented to enable a consumer to readily remove one or more segments of the strip of food from the rest of the strip of food by pulling the one or more segments and the remainder of the strip apart with the fingers. However, the Examiner has not provided any reasoning or evidence of how the claimed segmented rolled food item could be made by hand so that a strip of food is segmented on a support material. Thus, the requirements of MPEP 806.05(f) have not been met. Reconsideration and withdrawal of the restriction requirement between Groups II and III are respectfully requested.

III. RESTRICTION BETWEEN GROUPS I AND III

Pursuant to MPEP 806.05(g), an apparatus and a product made by the apparatus can be shown to be distinct if (a) the apparatus as claimed is not an obvious apparatus for making the product and the apparatus as claimed can be used to make other and different products; or (b) the product as claimed can be made by another and materially different apparatus.

As noted above, the Examiner has not established how the claimed lanes on a rotating roller and the claimed circumferentially placed projecting knife edges, which are configured for receiving and segmenting a strip of food, could be used to make plastic toys in a variety of shapes. In addition, the Examiner has not provided any reasoning or evidence of how the claimed segmented rolled food item could be made by hand such that a strip of food is segmented on a support material. The requirements of MPEP 806.05(g)

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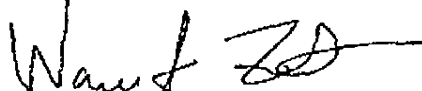
have not been met. Reconsideration and withdrawal of the restriction requirement between Groups I and III are respectfully requested.

IV. CONCLUSION

If there are any questions regarding this Response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

If there are any discrepancies in the fees, please charge or credit our Deposit Account No. 501032 (Docket No. KFHI-100).

Respectfully submitted,



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November 26, 2003